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UBER TECHNOLOGIES, INC.
14 and OTTOMOTTO LLC

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 WAYMO LLC,
19 Plaintiff,
20 v.
21 UBER TECHNOLOGIES, INC.,
22 OTTOMOTTO LLC; OTTO TRUCKING LLC,
23 Defendants.

Case No. 3:17-cv-00939-WHA

**UBER TECHNOLOGIES, INC. AND
OTTOMOTTO LLC'S MOTION FOR
RECONSIDERATION OF ORDER
DENYING-IN-PART
ADMINISTRATIVE MOTION TO
FILE UNDER SEAL (DKT. NO. 891)**

Date: August 24, 2017
Time: 9:00 a.m.
Ctmm: F, 15th Floor
Judge: Hon. Jacqueline Scott Corley

Trial Date: October 10, 2017

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on August 24, 2017, at 9:00 a.m., or as soon thereafter as the matter may be heard, in the United States District Court for the Northern District of California, San Francisco Courthouse, located at 450 Golden Gate Avenue, San Francisco, CA, in Courtroom 8 before the Honorable Jacqueline Scott Corley, Defendants Uber Technologies, Inc., and Ottomotto LLC (“Uber”) will, and hereby do, jointly move the Court, for an order granting the relief sought in its motion for reconsideration of the Court’s July 13, 2017 Order Denying In Part Administrative Motion to File Under Seal (“Order”), Docket No. 891. Specifically, Uber seeks an order:

1. Sealing portions in the second paragraph of Exhibit 5 to Waymo’s Letter Brief (Dkt. 681-10) identifying specific software and hardware technical features prioritized by Ottomotto; and
2. Sealing portions in the fifth paragraph of Exhibit 5 to Waymo’s Letter Brief (Dkt. 681-10) identifying projected numbers associated with analysis of potential profitability;
3. Sealing portions on Bates page UBER00017292 and UBER00017298 of Exhibit 6 to Waymo’s Letter Brief (Dkt. 681-11) containing financial and commercial terms corresponding to those for which the Court granted sealing in the draft Term Sheet (*See* Dkt. 707 at 3) and for which the Court has granted sealing in the Indemnification Agreement. (Dkt. 707 at 3-4.)
4. Sealing portions on Bates page UBER0017293 of Exhibit 6 to Waymo’s Letter Brief (Dkt. 681-11) identifying business terms with respect to Otto Trucking for which the Court granted sealing in the draft Term Sheet. (Dkt. 707 at 3.) For the Court’s convenience, Uber has marked the portions subject to this motion in Exhibits 1 and 2 to the Declaration of Michelle Yang.

Uber’s motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, and the Declaration of Michelle Yang (“Yang Declaration”), any matters of which this Court may take judicial notice, and on such other written and oral argument as may be presented to the Court.

1 Dated: July 20, 2017

MORRISON & FOERSTER LLP

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3 By: /s/ Arturo J. González
ARTURO J. GONZÁLEZ

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5 Attorneys for Defendants
UBER TECHNOLOGIES, INC.
and OTTOMOTTO LLC
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MEMORANDUM OF POINTS AND AUTHORITIES

Uber respectfully requests an order sealing certain technical, financial, commercial, and business terms in Exhibits 5 and 6 of Waymo's Letter Brief (Dkt. 681-10 and 681-11). Uber is mindful of the Court's sealing decisions in this case, including the finding that the scheduling or the signing of the Term Sheet and Indemnity Construct are now publicly known. (Dkt. 891 at 2.) Uber's request is narrowed only to the following portions, many of which correspond to terms for which the Court has previously granted sealing:

1. Sealing portions in the second paragraph of Exhibit 5 to Waymo's Letter Brief (Dkt. 681-10) identifying specific software and hardware technical features prioritized by Ottomotto; and
2. Sealing portions in the fifth paragraph of Exhibit 5 to Waymo's Letter Brief (Dkt. 681-10) identifying projected numbers associated with analysis of potential profitability;
3. Sealing portions on Bates page UBER00017292 and UBER00017298 of Exhibit 6 to Waymo's Letter Brief (Dkt. 681-11) containing financial and commercial terms corresponding to those for which the Court granted sealing in the draft Term Sheet (*See* Dkt. 707 at 3) and for which the Court granted sealing in the Indemnification Agreement (Dkt. 673; Dkt. 707 at 3-4); and
4. Sealing portions on Bates page UBER0017293 of Exhibit 6 to Waymo's Letter Brief (Dkt. 681-11) identifying business terms with respect to Otto Trucking for which the Court granted sealing in the draft Term Sheet. (Dkt. 707 at 3.)

The Ninth Circuit has explained that "[a] 'good cause' showing under Rule 26(c) will suffice to keep sealed records attached to non-dispositive motions." *Kamakana v. City of Cnty. of Honolulu*, 477 F.3d 1172, 1180 (9th Cir. 2009).

The marked portions in the second paragraph of Exhibit 5 to Waymo's Letter Brief (Dkt. 681-10) identify specific software and hardware technical features prioritized for development by Ottomotto. This information has been kept confidential, and, if disclosed, competitors could obtain a competitive advantage by tailoring their own LiDAR development strategy to target these software and hardware technical features, such that Uber's competitive standing would be

1 harmed. (Declaration of Michelle Yang in Support of Defendants’ Motion for Reconsideration
 2 (“Yang Decl.”) ¶ 4.) The Court has granted sealing of similar identifications of technical features
 3 in Uber’s technology. (Dkt. 891 at 2 (granting sealing of Dkt. 741-2 at 7-13); *Compare* Yang Ex.
 4 1 (second paragraph), with Dkt. 741-2 at 10-12 (identifying technical features).)

5 The marked portions in the fifth paragraph of Exhibit 5 to Waymo’s Letter Brief (Dkt.
 6 681-10) identify projected numbers associated with analysis of potential profitability. This
 7 information has been kept confidential, and, if disclosed, competitors could obtain an advantage
 8 by using this information about Ottomotto’s potential profit margin to compete against Uber,
 9 which would harm Uber’s ability to compete in the self-driving truck field. (Yang Decl. ¶ 5.)

10 The marked portions on Bates page UBER00017292 of Exhibit 6 to Waymo’s Letter Brief
 11 (Dkt. 681-11) contain financial and commercial terms corresponding to terms for which the Court
 12 granted sealing in the Draft Term Sheet. (*Compare* Yang Ex. 2 at UBER0017292, with Dkt. 510-
 13 3 at 34-36 (Exhibit B to Term Sheet).) In the June 5, 2017 Order, the Court granted sealing of
 14 Exhibit B to the Term Sheet, which contains these commercial agreement terms, finding that this
 15 confidential business information merited sealing. (Dkt. 550 at 3.) The Court again granted
 16 sealing this portion of the Term Sheet in its June 23, 2017 Order. (Dkt. 707 at 3.)

17 The marked portions on Bates page UBER00017298 contain financial terms
 18 corresponding to terms for which the Court granted sealing in the “indented paragraph on page 2
 19 [of the Indemnification Agreement] beginning with ‘If the Closing occurs’” (*Compare* Yang
 20 Ex. 2 at UBER00017298, UBER0017295, with Dkt. 510-3 at 51 (“If the Closing occurs”).)
 21 The Court had found that this confidential business information merited sealing. (Dkt. 550 at 3.)
 22 The Court also granted sealing of corresponding terms in the Indemnification Agreement upon
 23 Uber’s motion for reconsideration. (Dkt. 653.)

24 The marked portions on Bates page UBER0017293 of Exhibit 6 to Waymo’s Letter Brief
 25 (Dkt. 681-11) identify business terms with respect to Otto Trucking for which the Court granted
 26 sealing of these terms in the draft Term Sheet. (Dkt. 707; *compare* Yang Ex. 2 at UBER0017293,
 27 UBER0017295, with Dkt. 488-1 at 7 (under “Trucking Company” in redacted version); Dkt. 488-
 28 2 at 7 (unredacted version).) The marked portions refer to a sealed section of the Term Sheet, of

1 which the existence has not become public knowledge. If this information were disclosed, for
 2 example, competitors and counterparties could obtain a competitive advantage by tailoring their
 3 negotiation strategy to offer or demand similar business terms, such that Uber's competitive
 4 standing would be harmed. (Yang Decl. ¶ 6.)

5 For the foregoing reasons, Uber respectfully requests that the Court grant its motion for
 6 reconsideration and grant the sealing of: (1) the identified portions in the second paragraph of
 7 Exhibit 5 to Waymo's Letter Brief (Dkt. 681-10); (2) the identified portions in the fifth paragraph
 8 of Exhibit 5 to Waymo's Letter Brief (Dkt. 681-10); (3) the identified portions on Bates page
 9 UBER00017292 and UBER00017298 of Exhibit 6 to Waymo's Letter Brief (Dkt. 681-11); and
 10 (4) the identified portions on Bates page UBER0017293 of Exhibit 6 to Waymo's Letter Brief
 11 (Dkt. 681-11).

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 13 Dated: July 20, 2017

MORRISON & FOERSTER LLP

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 15 By: /s/ Arturo J. González
 ARTURO J. GONZÁLEZ

16 Attorneys for Defendants
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 18 and OTTOMOTTO LLC
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